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some of those extraordinary feats which are possible only to Arab horses and Arab riders. All at once, his steed leaps up high into the air, and comes down on the other side of the railing, in the middle of the crowd. A wild sharp cry rends the air,—a white form is seen writhing on the ground. “Seize the murderer!” is the loud order of the Kaïd, echoed by thousands of voices; but the murderer is already far away,—he has bounded through the ranks of the spectators, and, riding fleet as the wind towards the hills, you see the ever-diminishing outline of the Kabyle couched upon the neck of one steed, avoiding thus the bullets shot from a hundred guns, while his second horse keeps on at his side, nor ever flags in his desperate course. The white form is taken up. Blood flows in a torrent from the head that has been crushed by a blow from a steel-shod hoof, and all life is extinct! Poor Hâona! She, too, had come to the *fantasia*, and Amar-ben-Arif was the “second spouse” of whom report spoke mysteriously.

The last glance we take of the ill-fated Hadjoute, with her soft, luscious voice, reveals to us her dead body, laid out upon a couch. The fractured brow concealed, the face has all its old loveliness,—“the head slightly on one side, the arms stiffened, the eyelids quite shut in a sleep that was never more to end, she was like to what we had often seen her before, when she dropped off to sleep on her own silken couch; and she was now, as then, covered with her white orange-blossoms, but this time the flowers outlived her, not she them.”

ART. VII. — *Memoir of Theophilus Parsons, Chief Justice of the Supreme Judicial Court of Massachusetts, with Notices of some of his Contemporaries.* By his Son, THEOPHILUS PARSONS. Boston: Ticknor and Fields. 1859. 16mo. pp. 476.

WE look with great complacency on the genealogical researches which have been pursued with so much zeal by American antiquaries of the present day. We have, indeed, no

sympathy with the foolish ambition which seeks to connect the names of our ancestors with gentle blood in the times when the sword carved out estates and won titles for the semi-barbarous heroes that "came in with the Conqueror." The remoter radicles of our ancestral trees are by no means essential to their support. We would be content to cut off the roots that spread beyond our own soil. But in numerous Cis-atlantic lines of descent, we trace the transmission, for two centuries and more, of the most hardy and venerable traits of character, and find fresh confirmation of our firm belief, that God's patents of nobility are hereditary. Many are the New England names that have, in every generation, been borne with distinguished honor, and have become identified with all, in our civil and ecclesiastical history, on which we can look back with honest pride. We are glad to learn that Chief Justice Parsons numbered John Robinson among his maternal ancestors, while on his father's side there awaited him a goodly heritage of substantial worth and ability. Jeffrey Parsons settled at Gloucester in 1654, and became there a successful merchant and a prominent citizen. His grandson, Rev. Moses Parsons, was among the most learned, devout, and influential clergy of his day. His wife was even his superior, and while richly endowed with the practical tact and wisdom characteristic of the New England matrons of her time, she equally possessed the gift, so rare among them, of high intellectual taste and culture.

It was of these parents that Theophilus Parsons was born, in 1750. His native parish is now known chiefly as the seat of Dummer Academy, which was then under the superintendence of Samuel Moody, a man second to no classical teacher of his century in America, and unsurpassed in the ability to inspire the love, sustain the purpose, and strengthen the capacity of study. Among the felicitous circumstances of young Parsons's boyhood, we cannot attach too high a value to his being placed under the charge of a teacher so worthily eminent. His life-motto was one derived from his instructor, — "Crede quod possis, et potes." We cannot sufficiently admire the self-denying thrift which enabled the Rowley pastor, with his scanty stipend and the numerous claims then made

on clerical hospitality, to educate three of his children at Harvard University. Theophilus was graduated, with high reputation for industry and scholarship, in 1769. Shortly after leaving college, he was employed as a teacher in Falmouth, now Portland. At the same time, he was pursuing the study of the law, and was admitted to practice in 1774. He entered at once on an unusually lucrative business; but his prospects were soon overcast by the destruction of Falmouth, in October, 1775.

This grievous calamity, as he then deemed it, proved the most fortunate event for the future fame of the young lawyer. In the unsettled condition of public affairs, and the uncertain event of the struggle of the Colonies for freedom, he postponed the choice of a new professional location, and returned to his father's house. There he found Judge Trowbridge, who some years previously had resigned his seat on the bench, and had now sought out this quiet retreat, ostensibly to escape the small-pox, and no doubt equally with the view of withdrawing from the political agitations of the period, in which his strong Tory leanings prevented him from taking an active or decided part. His law library was the only good one then in New England, and he engaged with kind assiduity in the instruction of Parsons. His pupil applied himself to study with a diligence which, at one period, proved nearly fatal. He at the same time commenced practice in the courts of Essex County, and in 1780 we find him established in Newburyport, with a large and increasing business. In 1800, he removed to Boston; in 1806, he was appointed Chief Justice of the Supreme Court, and held the office till his death, in 1813.

Previously to his appointment on the bench, Mr. Parsons had taken a prominent part in the politics of the State and country. Conservative by nature and principle, he was of necessity a Federalist, and, while a resident of Essex County, he was intimately associated with the ardent partisans and genuine patriots who made that county the head-quarters of New England Federalism. Whatever may be our retrospective opinion of the questions which divided honest men in the infancy of our body politic, we can afford to be just to a long extinct party; and he must have read our history to little

purpose, who does not recognize in the Federalists of our first half-century a large proportion of the truly great minds, loyal hearts, and efficient activities of their age, and who does not trace in their influence the needed counterpoise to ultra-democratic tendencies, which, unchecked, would have precipitated the country into anarchy, and thence, no doubt, into despotism. They gave the ship of state such steerage as they could, under its full press of canvas, and the rudder was in their hands till the perilous capes, quicksands, and eddies of the opening voyage had been safely passed. In 1778, a convention of delegates from several towns in Essex County was held, to take into consideration a form of government which had been proposed by a State Convention. The result of the deliberations of this body was drawn up by Mr. Parsons. It demonstrated the feebleness and inadequacy of the proposed Constitution, which left the Executive almost powerless, and at the same time failed to define and guard the fundamental rights of the citizens. It entered at great length, with marked ability and keen discrimination, into the relative rights and duties of the people and their rulers, the distribution of the several functions of government, and the mutual limitations of freedom and authority. This document was extensively circulated, was no doubt largely influential in procuring the decisive rejection of the Constitution then before the people, and suggested the leading principles in the form of government proposed by the Convention of 1779, and adopted by the people. Of this Convention Mr. Parsons was a member, and was one of the committee of twenty-six appointed to draft a Constitution. At a subsequent period, the duty of presenting a final draft to be submitted to the people, was assigned to a committee of four, none of whom had served on the previous committee. Mr. Parsons was also an active member of the Convention called in Massachusetts for ratifying the Constitution of the United States. After this period, for various reasons, he was reluctant to enter upon political office, else he would undoubtedly have been urged into foremost places in the Legislatures of the State and nation. He declined the office of Attorney-General of the United States. In 1797, Mr. Adams offered him an honorable and lucrative place on the commission for deciding the

claims of British creditors on American citizens, intimating to him that, on the expiration of his term of duty, he should be transferred to some other department of the public service. This overture was declined, chiefly from family considerations.

The foundation for Mr. Parsons's signal success as a lawyer was laid, as we have indicated, in his "almost intemperate study" under Judge Trowbridge, and with the rare advantage of his library. From the books thus placed at his command he made numerous abstracts, which at once strengthened his memory and his mental grasp, and furnished him with authorities during the period when legal works, in this country, were few and difficult of access. Under the auspices of his venerable friend, he became "master of the law of Prize and Admiralty," — a distinction in which only two of his coevals entered into competition with him. His mode of practice at the bar indicated the extent and availableness of his resources. It was impossible to surprise him by any plea or motion which he was not fully prepared to meet. It was not an unusual thing for him to encounter on the spot some wholly unprecedented and unanticipated emergency in practice, as promptly and as efficiently as if he were fresh from study on that very point. His arguments were brief, seldom exceeding an hour, oftener short of half an hour than beyond that measure, even in cases in which opposing counsel had given him the example of prolixity. He seized on the salient points of his case, and because they were distinct and unembarrassed in his own mind, he made them clear, without apparent effort, to the minds of his hearers. His speech was fluent, and "had much power of varied expression." While he indulged in no superfluous declamation, — indeed, for this very reason, — he was capable of the warmest and most moving appeals in a cause that worthily awakened his sympathy. In the artistical sense of the word, he was far from eloquent; while, judged by its effects, his was the highest form of forensic eloquence. His perfect ease and simplicity of manner carried with an intelligent jury an irresistible weight of conviction, against which they would have guarded themselves, had the same arguments been urged with more ambitious oratory. Chief Justice

Isaac Parker loved to relate the circumstances of his first interview with Parsons. The case was an important one, and Parsons was then young in his profession. When he rose to address the jury, "he put one foot in his chair, and, with his elbow on his knee, leaned over and began to talk about the case as a man might talk to his neighbor by his fireside." By a short address he got a verdict for his client. When the jury were dismissed, one of them said to Parker: "Who is this Mr. Parsons? He is not much of a lawyer, and don't talk as if he would ever be one; *but he seems to be a real good sort of a man.*"

The high esteem in which his legal attainments were held, is evinced by the circumstances of his judicial appointment. The resignation of Chief Justice Dana left upon the bench of the Supreme Court Justices Sedgwick, Sewall, Thatcher, and Parker. Judge Sedgwick had been Speaker of the House of Representatives in Congress, and had a high reputation as a jurist. Judge Sewall had been a member of Congress, and succeeded Parsons as Chief Justice. Judge Thatcher had been a member of Congress, and, in addition to his legal attainments, was eminent for his social qualities. Judge (afterward Chief Justice) Parker had been recently appointed. Over these distinguished men, and at the instance of Sewall and Parker, Governor Strong appointed Parsons. He accepted the office from a profound sense of public duty, and at great personal sacrifice; for he was not rich, had a large family, and was in the receipt of ten thousand dollars a year from his practice. His chief aims, in the exercise of his office, were rigid adherence to the forms, rules, and precedents of law, the shortening of trials, and the expeditious administration of justice, in contradistinction to the latitudinarianism of construction, the introduction of irrelevant matter in testimony and in argument, and the vexatious delays, which had grown upon the practice of the court under its previous organization. He generally required the advocate to state, at the outset, the points to be embraced in his argument, and, if they were wholly untenable or inadequate in his opinion, he permitted no argument, and suffered the case to go no further than was requisite to present to the court the question of law, if there

was one. He cut short all the *ambages* which tended to involve or clog the case under trial, and was no less peremptory in his excision of the superfluous rhetoric of such men as Dexter and Otis, than of the drivelling of the feeblest members of their fraternity. He rigidly excluded whatever had not at once legal validity and direct relevancy to the case in hand. Probably there has sat upon no Bench in the United States so merciless a murderer of the forensic eloquence which is aimed against time, law, and common sense. Of course, he was vehemently complained of, at the outset, as arbitrary and overbearing; but his perfect impartiality helped to reconcile the bar to his method, and the vast public benefit that accrued from it cannot be over-estimated. At the time of his advent to office, the science of special pleading was in its infancy in New England, and at some of the courts the judges were still in gross ignorance with regard to it. Chief Justice Parsons introduced, in this respect, an important reform, refusing to allow a trial where the pleading was defective. In the administration of criminal justice he was strict in adherence to legal forms and rules of evidence, yet signally humane, always securing to the accused the benefit of reasonable doubts as to his guilt. His legal opinions were carefully considered, and succinctly and lucidly expressed; and it is believed that no judicial name has borne a higher posthumous authority than his in the New England courts.

Chief Justice Parsons was far from being a mere lawyer as to his taste and erudition. Indeed, had he been learned in his own profession only, we cannot believe that any conceivable amount of ability or study would have given him his enduring reputation and influence as a judge. Two entirely different routes may lead to what is called judicial eminence. The one is through the law alone, by a microscopic eye for the niceties of verbal construction, and a technical precision and skill in the interpretation of language and the identification of precedents. This description of tact is unanswerable and irresistible in its *dicta*, so far as individual cases are concerned; its decisions are backed by a certain legal necessity, and cannot be evaded or overridden; and its possessor is deemed a great man, because his word has such cogent power

over the interests which it concerns. Such a man Lord Kenyon seems to have been,—a narrow-minded ignoramus as to what every decently educated school-boy knows, but a subtle analyst of words, an indefatigable mouser after precedents, made keen in his scent as a lawyer by the entire absence of those imaginative elements which might have led him sometimes upon a wrong trail. A mind of this description leaves no mark even in its own department; for it has enunciated no principles, has established no truths, has given birth to no legal maxims endowed with an inherent and essential validity. The other route is through large and liberal culture rendered available to specific uses by high aims and arduous industry in the one chosen profession. The jurist thus endowed discerns the relations of things, not of terms alone; conceives of law, not as word-jugglery, but as formulized right; and interprets it, not by the possibilities of exegesis, but by reason, analogy, and common sense. He cannot indeed abjure technicalities; but he can make them the moulds for general principles. He cannot disown precedents; but he can select from among them such as accord with truth and equity. He cannot force the law to suit the case; but he can bring the case within the range of such legal principles as apply to its actual merits, rather than to its accidental, though salient features. He can modify and enlarge the ever-varying and cumulative body of declarative law by lights derived from every department of knowledge. The opinions of such a jurist have a vitality cogent, diffusive, and lasting. His decisions have a basis of immutable right. He is in his own kind a creator, a poet. His function is legislative in fact, though judicial in form. In the phrase of the courts, he *makes law*. Chief Justice Parsons occupied his seat on the bench at a period when, under the novel circumstances of our infant commonwealth and republic, the inherited common law of the mother-country was in a transition state, and there was a great deal of law to be *made*; and his extended and varied learning combined with his thoroughness and accuracy as a lawyer to fit him for a leading part among the creative minds in his profession.

We are astonished at the largeness of his acquisitions. In a library of five or six thousand volumes, most of them spe-

cially imported, we are told that hardly one was procured except for some definite purpose or use. He was a superior Greek scholar, as well as a diligent reader of the best Latin authors. He was familiar with the most advanced chemical science of his day, and was associated with the late Rev. Dr. Prince in the experimental study of natural philosophy. He was deeply interested in botany, and discovered the *Magnolia glauca* in its anomalous Northern habitat on Cape Ann. He left numerous manuscripts on mathematical subjects, and we have in the Appendix to the volume before us an abstruse Essay by him on Parallel Lines, and a method, original with him, for extracting the Roots of Affected Equations. He read with equal avidity history and fiction, and was conversant with the older English poets. His services in the diffusion of knowledge were faithful and efficient. He was among the founders, and the first President, of the Boston Athenæum. He is believed to have contributed some of the earliest scientific papers to the Memoirs of the American Academy of Arts and Sciences. He was for several years one of the Fellows of Harvard University, and, as such, was largely influential in securing the appointment and acceptance of Dr. Kirkland as President, and also in founding the Professorship of Natural History.

In ascribing to the subject of this paper so large a circuit of attainments in literature and science, we might seem to brand him with superficiality; but such an inference would be at the farthest remove from the fact. In science it must be remembered that in his day the amount of knowledge that could be acquired bore but a small proportion to that which has been accumulated within the last half-century. The then known details in the entire realm of science might be mastered by labor which would now hardly raise one above the rank of a mere tyro in a single branch. The arts and methods of investigation were comparatively simple, and within the scope of any well-cultivated mind. As regards literature, too, the omnivorous reader may be, yet need not be, superficial. There is a process, by which one may deal with books as the bee with the clover-blossom. The fitly trained eye may read a paragraph at a glance, and, in a tithe of the time which

the perusal of a book word for word would demand, may take in whatever portions of its contents can enrich the intellect or worthily occupy the imagination. He who thus reads is far less superficial than he who does equal honor to the entire contents of a book. The former digests and assimilates all that can nourish or invigorate his mind; while the latter discharges from his overloaded memory alike what ought to be retained and what is best forgotten.

Chief Justice Parsons in his private character merited and won the profoundest respect of all, and the fervent love of those who shared his home, enjoyed his hospitality, or were favored by his intimacy. His moral standard was high and rigid. No shadow of reproach ever rested on his name. Neither elevated station nor the most arduous professional toil interfered with his discharge of the duties, or his exercise of the amenities and charities, of daily life. Eminently happy in his domestic relations, he was unexacting, tender, and genial in his family intercourse and discipline. His hospitality was large and generous. At his Saturday dinners were always gathered a goodly circle of friends, and such strangers as had claims upon his kindness; and while he was a fluent talker and loved to bear his full part in conversation, he always took care to draw out his diffident and retiring guests, and to make every one feel at ease and appear to the best advantage at his table. Though not inclined to melancholy, and disposed to take cheerful views of mankind and of life, he suffered much from that form of hypochondria which consists in excessive apprehension of sickness, and the imagining of the symptoms of disease. For this he had indeed the not inadequate physical cause, in an almost lifelong dyspepsia. But whatever his fears, they made him neither indolent nor selfish. In temperament he was nervous, and constitutionally irascible and passionate; but over this tendency he kept so firm a control that from an early period in his life no angry word was known to have escaped his lips. The hygienic department of duty was the only one in which he is not presented as excellent and exemplary. In this regard the hebetude of conscience almost universal in his time seems to have characterized him in full; and by his neglect of the essential conditions of health

he was perpetually aiding in the realization of his worst fears. He must have had a wonderfully elastic and vigorous constitution of body, as of mind, to sustain for so many years such excessive labor of the brain, with not exercise enough to wear out a pair of shoes in a year, with free though temperate habits as to the indulgences of the table, and with the inordinate use of tobacco in all its forms. On the whole, his portrait seems a not unapt representation of his mental and moral features. A character so massive as to merge in its quantity all questions as to its proportions; a framework of mind and will so energetic that its strength alone was sufficient to give it beauty; an aggregation of the most noble qualities and endowments, which left equally little room for the minor graces, for meanness and for vice,—these are the impressions left upon us by the perusal of his Memoir, and they correspond with those which we derived in our early boyhood when his was a familiar name on the lips of our elders.

It is worthy of emphatic note that Chief Justice Parsons professed firm belief in Christianity, revered its institutions and ordinances, became a communicant in the latter part of his life, and assigned for his not having joined the church at an earlier period a reason which indicates anything rather than indifference to the established forms of religion. We say not this because we regard Christianity as honored by the belief and profession of any man, however distinguished, but because we cannot recognize the claims to our eminent regard and unqualified honor of any man in Christendom who is not a Christian. Least of all would we respect for its judicial aptitude and ability the mind which failed to perceive and own the validity of the Christian evidences, and the divine authority of Jesus. Judge Parsons was accustomed to say to his friends: “I examined the proofs and weighed the objections to Christianity many years ago, with the accuracy of a lawyer; and the result was so entire a conviction of its truth, that I have only to regret that my belief has not more completely influenced my conduct.” We are glad to find the record of his example as to the strict observance of the Sabbath as a holy day. Whatever the emergency, he transacted no business during the Sabbath hours; his usual books and

occupations were laid aside, and the day was set apart in the invariable order of his domestic arrangements to its sacred uses. We can have no doubt that this adherence to a law which is as legibly written on the constitution of man as on the pages of revelation, had an important agency in preserving his intellectual vigor and acumen unimpaired, while his physical powers were perceptibly enfeebled and declining.

He "died in the zenith of his reputation, in the full strength of his understanding." He held his last court at Worcester during the month preceding his decease. His fatal illness baffled the discernment, while it eluded the skill, of his physicians, and is now believed to have been "a rapid termination of a softening of the brain, which had begun a considerable time before." His closing days were passed, for the most part, in lethargy, with intervals of dreamy half-consciousness; but previously to his lapse into this state he had made his arrangements for departure, and conversed as a dying man with his family, friends, and pastor. From the brief shadow which fell upon the closing scene, he emerged with "the look of one who had prevailed in a great controversy" on his lifeless countenance.

Had our own leisure and the length of previous articles in this number permitted, we should have given a more ample space to our tribute to this great and good man. We cannot close without expressing our high appreciation of the Memoir from which we have compiled this notice. It combines with the tender reverence of a child, the nicest discrimination, and the most rigid impartiality. We have seldom read a biography which has given us so vivid a perception of the manners, habits, and character of its subject. There is no suppression of those lesser traits which the fastidious might deem blemishes, but which are to the judicious reader only proofs that the person portrayed is the real, living man, and not one of the impossible demigods to whom biography gives a name, but who never had a local habitation. Mr. Parsons has written in a rambling, discursive style, and has introduced a great deal which bears somewhat indirectly upon his main purpose; but we have abundant reason to thank him for this, inasmuch as he has preserved many features of the times, and many per-

sonal anecdotes and reminiscences, which must otherwise have passed away without record. There is an ease amounting almost to carelessness in the diction of the book, and in the arrangement of the material; but it is the graceful ease of a man of taste and letters, and constitutes not a defect, but, in our esteem, a crowning merit. The author abandons himself, without reserve, to the current of his own thought and feeling, and in so doing has given us two biographies under the title of one. While we tender to him our hearty thanks for reproducing to our familiar knowledge his father, who has till now been to us of a younger generation little more than an honored and revered "nominis umbra," we are hardly less grateful for the equally intimate acquaintance he permits us, through these pages, to form with the heir of the paternal name, worth, learning, and reputation.

ART. VIII. — *The English Language in its Elements and Forms.* By W. C. FOWLER, late Professor of Rhetoric in Amherst College. New York: Harper and Brothers.

No subject offers more numerous difficulties to the teacher inclined to go beyond the mere letter of the text-books, and to ask the reasons of things, than that of English Grammar. Nor is there any subject in the curriculum of our lower schools which so generally awakens disgust on the part of the pupil. To the teacher, the multitude of books, the discrepancy in both principles and their applications, and, above all, the inadequacy of the system to meet the facts of the language, render it an unsatisfactory department. To the pupil, the long paradigms conveying no clear ideas, and the mass of exceptions overloading the rules, make the whole study tedious.

But why should this state of things exist? Why should it be at once so irksome and so unsatisfactory to study the principles of the language in which our thoughts find utterance every moment, and in which more living ideas are embodied than in any other tongue? Not for want of books, nor be-